Accordingly, I will answer the questions for determination not in the way or the order in which they have been stated but as follows:

(1) the purpose trusts declared by clause 11 of the will having failed, the income which has accrued or accruing from the date of such failure shall fall into the residuary estate under, and shall be distributed in accordance with, clause 21 of the will;

(2) the trustees shall hold the capital of the trust fund until the expiry of the trust period when the said capital shall be divided into two halves and distributed one half each equally among the male descendants (from both the male and female lines of descent) then living of Edward Tan and Farrer Tan respectively.

The costs of this application to be corpus. Liberty to apply.

Order accordingly.

Solicitors: *Donaldson & Burkinshaw; Allen & Gledhill; Oehlers & Choa; Tang & Tan; Tan Rajah & Cheah.*

YUSUF JUMABHOY v. THE LAW SOCIETY OF SINGAPORE

[O.C.J. (Chan Sek Keong J.C.) January 19, 1988]

[Singapore – Originating Summons No. 65 of 1987]

Legal Profession – Complaint against advocate and solicitor – Whether complaint valid and substantiated – Whether there is a right to oral hearing before Inquiry Committee – Legal Profession Act, ss. 87(5) & 96.

Legal Profession – Report of Inquiry Committee – Whether could be disclosed.

The plaintiff lodged a complaint with the Law Society against Teo Eng Leong, an advocate and solicitor, for extortion. The complaint was duly sent to the Inquiry Committee for investigation. The Inquiry Committee completed its investigation and concluded that a formal investigation was not required. The Council of the Law Society accepted the recommendation of the Inquiry Committee that the complaint be dismissed and accordingly informed the plaintiff. The plaintiff then wrote to the Council for its reasons in writing and also for certain particulars relating to the identities of the members of the Inquiry Committee and the manner in which they arrived at their decision and also to be given a copy of the said recommendation. The Council in its reply declined the plaintiff's requests.

The plaintiff, being dissatisfied with the determination of the Council, applied under section 96 of the Legal Profession Act for an order that the Law Society be directed to apply to the Chief Justice for the appointment of a Disciplinary Committee to investigate into the said complaint.

Held, dismissing the application: (1) save for section 87(5), the Act has not prescribed any procedural requirements that the Inquiry Committee must follow in investigating a complaint against an advocate and solicitor. Section 87(5) was not intended to confer any rights on a complainant but to provide an opportunity to the advocate and solicitor complained against to reply to allegations against him and to request an oral hearing. There is nothing in section 87(5) to say that even if he were to request an oral hearing, he would be automatically entitled to one;

(2) the plaintiff had no right to an oral hearing before the Inquiry Committee;

(3) in any case the plaintiff's contention that he was not heard by the Inquiry Committee had no bearing on the substance of the application;

(4) there was nothing in the plaintiff's complaint which could amount to the commission of extortion on the part of Teo;

(5) as the Inquiry Committee had not, on its own motion, under section 87(1)(b) of the Act, to deal with any other possible misconduct arising from the complaint, this court was in no position to consider it;

(6) the determination of the Council was affirmed.

[*Editorial Note:* In the course of the proceedings, the court requested for the report made by the Inquiry Committee. The Council of the Law Society objected whereupon the court ordered the report to be disclosed. The reasons for this court order are stated in the judgment.]

Cases referred to:

(1) *Westminster Bank Ltd.* v. *Beverley Borough Council* [1969] 1 Q.B. 499.

(2) *Schiffahrtsagentur Hamburg Middle East Line GmbH* v. *Virtue Shipping Corpn.* [1981] 2 All E.R. 887.

ORIGINATING SUMMONS.

B. Mohan Singh for the applicant.
A.C. Fergusson for the respondent.

Cur. Adv. Vult.

Chan Sek Keong J.C.: On September 2, 1986, the plaintiff lodged a complaint with the Law Society against Teo Eng Leong ("Teo") for extortion. The complaint was supported by (a) a copy of a report dated August 13, 1986 which he had made to the police; (b) a copy of a form of receipt marked "A"; (c) a memorandum marked "B"; and (d) a copy of a telex marked "C".

The report to the police contained the following allegations:

(1) the plaintiff had handed to one Wong Yiu Kong for repair a gold and diamond necklace valued at about $20,000;

(2) Wong did not return the necklace after repairing it;

(3) on August 8, 1986, the plaintiff went to see Teo, who was acting for Wong, for the return of the necklace and was told by Teo that it would be returned if the plaintiff paid the sum of $9,269 being Wong's charges for making the said necklace; the plaintiff told Teo that he had paid for the necklace in full but Teo maintained that the said sum must be paid before he would release the necklace;

(4) so as not to lose the necklace altogether, the plaintiff, on August 12, 1982, went to see Teo with $9,269 in cash and the receipt marked "A"; Teo amended the form of the receipt to "protect" his client and as a result receipt "B" came to be signed;

(5) the plaintiff signed the receipt in order to obtain the return of his property; what Teo had done amounted to extortion and he had, immediately after the event, sent a telex to Teo in protest.

Receipt "A" read as follows:

"Received from: Mr. Y.R. Jumabhoy
The sum of: Nine thousand two hundred and sixty nine dollars

Being: Payment made to obtain return of a diamond and gold necklace handed for clasp repair to Mr. Wong Yiu Kong on the 5/8/86 and retained by him against funds owing to him by Yap Tong Fa in respect of a cheque in a similar amount given to Link Jewellery which was dishonoured."

Receipt "B" read as follows:

"Received from Mr. Y.R. Jumabhoy
The Sum of: Nine thousand two hundred and sixty nine ($9,269.00).

Payment made for Yap Tong Fa in respect of charges due and payable to Wong Yiu Kong for work done and services rendered in respect of the repair of a diamond and gold necklace handed to Wong Yiu Kong by Miss V. Cary on 5th August 1986 and which sum is to be released to Wong Yiu Kong forthwith, against return also of a dishonoured cheque given to Wong Yiu Kong.

Dated this 12th day of August 1986.

Signed: Eng Leong & Partners

I, Y.R. Jumabhoy hereby acknowledge receipt of the necklace as aforesaid in good order and condition. I am in full agreement with the abovesaid terms.

Dated this 12th day of August 1986.

Signed: Y.R. Jumabhoy"

The telex read as follows:

"I wish to place the following on record before I commence necessary action:

1. I have just returned from your office after signing and receiving a form of 'receipt' which you made me sign to enable me to obtain the return of a gold and diamond necklace belonging to my family left with your client Wong Yiu Kong for repair and retained by him unlawfully.

2. The said 'receipt' is false in material particulars and was only signed by me under duress after you refused to accept the receipt drawn up by myself. Accordingly the same is repudiated.

3. I regard this as a clear case of extortion in that you have obtained the sum of $9,269 from me in cash in exchange for the said necklace on a debt allegedly due to Wong from some one else. Will you return the said sum of $9,269 to me forthwith.

4. I shall also report your conduct to the Law Society."

Teo had on receipt of the plaintiff's telex immediately telexed a reply to the plaintiff and copied the same to the Law Society. Teo's telex gave a somewhat different account of what had happened the day before and at the meeting of August 12, 1986. The relevant paragraphs are as follows:

"(1) On 11th August, I re'cd a tel. call fm u informing me that u wuld be coming to my office at 2.30 p.m. the next day to obtain the return of the necklace. I reiterated that my firm was and never had been in possession of the necklace n that Mr. Wong Yiu Kong was not in S'pore. Notwithstanding that, u insisted on coming to my office n u also wanted me to arrange for Mr. Wong's representative in S'pore to be present. U also gave me the understanding that u wuld be coming to my office with a sum of $9,269.00 to be given in exchange for the return of the necklace.

(2) At 2.20 p.m. u and a European lady who was introduced by u to me as one Miss V. Cary arrived at our office. At the outset, u informed me that u had brought a cash sum of $9,269.00. U then placed an envelope on my table. U then told me that the envelope contained cash.

(3) Miss V. Cary told me in yr presence that one Mr. Choo wuld also be coming for the meeting. I then told u that Mr. Wong's representative, one Mr. Tham wuld be coming for the meeting. We waited until Mr. Choo n Mr. Tham stepped into my office.

(4) When Mr. Tham n Mr. Choo were ushered into my room, u immediately told Mr. Tham that U had brought the cash sum of $9,269.00 n demanded the return of the necklace. Mr. Tham then told U that the necklace was not with him but was then kept in a safe box. He told u that he wuld go n get it for u. Mr. Tham n Mr. Choo then left my office.

(5) When Mr. Tham n Mr. Choo left my office, u handed me a note purporting to be a draft receipt which was to be signed by the recipient of the cash sum of $9,269.00. Upon reading it, I immediately told u that the draft was not acceptable. I then prepared a draft for yr perusal. U culd not agree to my draft terms. We then launched into a debate as to how the receipt shuld be worded. All these while, Mr. Ranjeet Singh our learned brother at law was present.

(6) When we still culd not come to an agreement on the terms of the receipt, u suggested that the necklace n the cash sum of $9,269.00 be placed with the court n so that the matter be interpleaded. I was in full agreement with this suggestion as that was the fairest way the issue culd be resolved.

7) Eventually, u retracted yr very own suggestion of the matter being interpleaded, u then proceeded to make yr own amendments to my draft which were accepted by me. I hv in my file a copy of the draft with yr amendments made in yr own handwriting.

8) Mr. Tham then came back to my office n handed to u the necklace. The receipt (in duplicate) described as a memorandum was duly signed by yourself n myself on behalf of my firm."

The complaint was duly sent to the Inquiry Committee for investigation. On December 15, 1986, the Inquiry Committee completed its investigation and concluded that a formal investigation was not required. The Council accepted the recommendation of the Inquiry Committee that the complaint be dismissed and accordingly informed the complainant on January 2, 1987. On January 14, 1987, the complainant wrote to the Council for its reasons in writing and also for certain particulars relating to the identities of the members of the Inquiry Committee and the manner in which they arrived at their decision and also to be given a copy of the said recommendation.

On January 14, 1987, the Executive Secretary to the Council replied to the complainant as follows:

"I thank you for your letter dated 14th January 1987.

The Council dismissed your complaint on recommendations of the Inquiry Committee for the following reasons:

(1) The Council rejected the allegations of extortion made by you against Mr. Teo Eng Leong.

(2) The complaint disclosed a civil right on your part to sue the appropriate party for the return to you of the sum of $9,269.00 which you claimed was paid twice over as the cost of repairs to the jewellery.

(3) The Council also takes the view that the tenable allegations do not constitute uprofessional conduct on the part of Mr Teo Eng Leong and that if your complaint disclosed anything at all, it disclosed a possible right of action by you against the appropriate party for a claim and return of $9,269.00.

As regards paragraph 3, I am unable to assist you in view of section 68 of the Legal Profession Act."

The plaintiff, being dissatisfied with the determination of the Council, applied under section 96 of the Legal Profession Act (1982 Reprint) for an order that the Law Society be directed to apply to the Chief Justice for the appointment of a Disciplinary Committee to investigate into the said complaint. The plaintiff's reasons for being dissatisfied were as follows:

(i) he had not been given any opportunity by the Inquiry Committee to state his case;

(ii) Teo had "forced" him to pay a second time to his client while holding the article in his hand;

(iii)Teo knew his client had been paid by him.

Counsel for the applicant submitted that the complainant had a right to be heard and that the Inquiry Committee, by not giving him an opportunity to state his case, had failed to conduct an inquiry in accordance with the Act. It was suggested that section 87(5) of the Act implied that the Inquiry Committee must conduct a hearing at which the complainant must be present. It was also suggested that there was a *lis inter partes* in a complaint and for that reason the complainant must be heard.

I do not agree with this submission. Save for section 87(5), the Act has not prescribed any procedural requirements that the Inquiry Committee must follow in investigating a complaint against an advocate and solicitor. Section 87(5) was not intended to confer any rights on a complainant but to provide an opportunity to the advocate and solicitor complained against to reply to the allegations against him and to request an oral hearing. There is nothing in section 87(5) to say that even if he were to request an oral hearing, he would be automatically entitled to one. The reason is that the Inquiry Committee might accept his explanation and

exonerate him. In practice, what would happen would be that the advocate and solicitor would give a written explanation and at the same time request a hearing if the Inquiry Committee were not prepared to exonerate him upon his explanation. There would be no reason for the Inquiry Committee to hold a hearing if the explanation were accepted. It therefore follows that the advocate and solicitor concerned would be entitled to a hearing if the Inquiry Committee were not satisfied that the explanation met the charges against him. This, in my view, was what section 87(5)(b) meant when it provided that the Inquiry Committee "shall give the advocate and solicitor concerned reasonable opportunity to be heard if he so desires and shall give due consideration to any explanation he may make."

In the present case, it has not been disclosed to the court whether Teo had requested a hearing. What has been disclosed is that the Inquiry Committee did not give Teo an oral hearing before dismissing the complaint. If Teo had not asked for a hearing and thereby had not acquired a right to a hearing, how could it be contended that in these circumstances the complainant had such a right? On the other hand, if Teo had requested a hearing but the Inquiry Committee had considered that it was not necessary to hold a hearing, because they were satisfied there was no case to answer, how could the decision of the Inquiry Committee give rise to a right to an oral hearing in the complainant? In my view, the plaintiff had no right to an oral hearing before the Inquiry Committee.

In any case, the plaintiff's contention that he was not heard by the Inquiry Committee had no bearing on the substance of his application. He has applied for an order that the Law Society be directed to apply to the Chief Justice to appoint a Disciplinary Committee to investigate his complaint against Teo. The plaintiff could not possibly succeed on the ground that he has not been heard but only on the ground that his complaint showed a *prima facie* case against Teo. The Council of the Law Society has given three "reasons" for dismissing the complaint. Unfortunately, the reasons do not explain precisely and concisely the grounds on which the Council arrived at its decision.

The first "reason" was that the Council had rejected the allegations of extortion made by the plaintiff. The rejection certainly led to the dismissal of the complaint but no explanation was given as to which allegations were rejected and why they were rejected. The second "reason" was that the complaint disclosed a civil action on the part of the complainant to sue for the recovery of the amount paid. This "reason" was ambiguous because the complainant would have the same right if the complaint had disclosed a *prima facie* case of extortion. Therefore, it was not a clear explanation. The third "reason" was that the "tenable allegations" did not constitute unprofessional conduct on the part of Teo. This statement implied that there were "tenable allegations", but did not identify them. Therefore, it was impossible for the complainant or the court to understand this reason. Indeed, I suggested that it might be arguable whether if Teo had knowingly assisted his client to take advantage of the circumstances of the situation to exact a payment to which his client was not entitled in law, he might be guilty of some form of misconduct. Counsel for the Law Society was not able to explain to the court what these "tenable allegations" were except the said expression was taken from the Report of the Inquiry Committee ("the Report").

Under section 88(2) of the Act, the Council is under an obligation to give reasons for its decision. In this context, the expression "reasons" means the grounds of explanation for the decision of the Council. The reasons should be such as are readily comprehensible to the complainant so that he could decide whether he should invoke his right of appeal and, if there is such an appeal, to enable the court to review the decision. The Council must give reasons not only to inform but to explain; they must be full and sufficiently intelligible and deal with the substantial points at issue: see 1 *Halsbury's Laws of England* 4th Ed. para. 16.

In *Westminster Bank Ltd.* v. *Beverley Borough Council*[1] Donaldson J. (as he then was) said:

> "... there was a statutory obligation to give reasons, ... the obligation is to notify the reasons for a decision and, by necessary implication, to notify them fully and sufficiently. It is not an obligation to give sufficient reasons, which is a totally different conception going directly to the merits of the decision. This obligation is of the greatest importance as compliance enables an applicant to place before a court the materials which will or may enable it to determine whether the Minister has acted within his powers. If therefore reasons are not stated or are stated inadequately, it will follow almost as of course that the applicant has been substantially prejudiced. This is not to say that the reasons need be set out with the complexity which so often flows from a determined search for the ultimate in precision, but rather that so far as possible they shall be couched in language which is readily intelligible to those who have been spared a lawyer's training."

Similarly, in *Schiffahrtsagentur Hamburg Middle East Line GmbH* v. *Virtue Shipping Corpn.*,[2] Goff J. (as he then was) held that the expression "reasons for the award" under section 1(5) of the Arbitration Act 1979 (of England) included the relevant facts on which the arbitrator's conclusion was based and was not limited to the arbitrator's reasoning and that where an arbitrator gave "reasons for his award", whether voluntarily or upon the request of a party, his reasons

> "should ordinarily be sufficient both to inform the parties of the basis of the decision, and to enable the court, if appropriate, to review the matter on appeal" (at p. 892).

In view of the unsatisfactory "reasons" given by the Council and in particular the delphic expression "tenable allegations", I requested counsel for the Law Society to disclose to the court the Report so that the decision of the Council could be understood. Thereupon, counsel for the Law Society, on the instructions of the Council, objected to the disclosure of the Report on the ground that it was subject to a statutory immunity from disclosure by virtue of section 68 of the Act which reads as follows:

> "Save insofar as may be necessary for the purpose of giving effect to any resolutions or decisions of the Council or the Inquiry Committee secrecy shall be maintained in all proceedings conducted by the Council, its staff and the Inquiry Committee."

At the resumed hearing, counsel for the Law Society maintained this objection. I overruled the objection and ordered disclosure. The Report was subsequently disclosed. Here are my reasons for making the order.

Firstly, to give the wide meaning to that section as contended by counsel for the Law Society would give to each of the Law Society and members of its staff and the Inquiry Committee a statutory privilege which many other corporate or body of persons in Singapore do not have. Could this have been the intention of that section? In my view, the answer must be in the negative, not only because the proceedings of the Law Society and the Inquiry Committee are of such paramount importance to the security, welfare and government of the nation that they must not be disclosed to the public but also because no penalty has been prescribed for a breach of secrecy under that section. It would seem to me, although it is not necessary to form a concluded view on it, that this provision is directory in effect and is nothing more than an injunction to members of the Council and the Inquiry Committee not to discuss any proceedings before them with any outsiders.

Secondly, section 88(2) requires the Council to give reasons for its decision and this must imply that the proceedings of the Inquiry Committee and the Council in relation to a disciplinary inquiry cannot be kept secret. Indeed, section 68 itself provides that secrecy need not be maintained in order to give effect to a decision of the Council.

I have now perused the Report in which the explanation given by Teo was summarized as follows:

> "He received a call from Tanglin Police Station on August 8, 1986 and the caller said that Mr. Jumabhoy had gone to see him. He soon found himself talking to Mr. Jumabhoy over the phone. As a result of the conversation an appointment was made for Mr. Jumabhoy to call on him and he did call on August 12, 1986 with $9,269.00 to collect the jewellery. While waiting for one Mr. Tham to take the necklace to Mr. Teo's office, Mr. Jumabhoy gave him a draft receipt which he refused to accept as drawn. An argument followed and Mr. Teo eventually accepted a draft as amended by Mr. Jumabhoy in his own handwriting. The receipt as amended and signed by Mr. Jumabhoy and a sum of $9,269 in cash were exchanged for the jewellery. Mr. Teo took strong exception to the allegations of extortion."

The Inquiry Committee had not made any specific findings of fact but had proceeded on the basis that the allegations of the plaintiff, even if substantiated (thus explaining the meaning of the expression "the tenable allegations"), did not show that Teo had committed extortion or abetment of extortion. I agree with this finding. There is nothing in the plaintiff's complaint which could amount to the commission of extortion on the part of Teo. Although the plaintiff had stated in his complaint that he went to see Teo with the money "so as not to lose the necklace altogether", this was not the same thing as saying that Teo or his client had put him in fear of losing his necklace. Moreover, it was inconceivable that Teo, who was by then aware that the plaintiff had already reported the matter to police, would have resorted to the commission of a serious offence in order to obtain payment for his client, and in the presence of so many witnesses.

As the Inquiry Committee had not, on its own motion, under section 87(1)(b) of the Act (a useful power which has been abrogated by Act 30 of 1986), to deal with any other possible misconduct arising from the complaint, this court is in no position to consider it.

In the circumstances, the application of the plaintiff is dismissed and the determination of the Council is affirmed. The plaintiff is to pay costs of the Law Society.

Order accordingly.

Solicitors: *B. Mohan Singh & Co.; A.C. Fergusson.*

UNITED OVERSEAS BANK LTD. v. FORWARD OVERSEA CREDIT LTD.

[O.C.J. (Grimberg J.C.) January 18, 1988]

[Singapore – Originating Summons No. 900 of 1987]

Land Law – Mortgage and charge – Mortgage registered in Registry of Deeds and later under Companies Act – Charge created meanwhile – Charge registered at Registry of Deeds – Priorities – Registration of Deeds Act (Cap. 269, 1985 Ed.), s. 15 – Companies Act (Cap. 50, 1985 Ed.), s. 131(1).

On May 30, 1985, G.S. Corporation (Singapore) Pte. Ltd. created a mortgage over its immovable property in favour of the defendants. The mortgage was registered at the Registry of Deeds on March 3, 1986. By virtue of section 131(1) of the Companies Act, the mortgage was liable to be lodged with the Registrar of Companies for registration within 30 days. The mortgage was, however, not registered within the time stipulated. After the expiry of the period, the defendants applied for an extension of time for a further period of 30 days (the first extension). On October 13, 1986 the extension was granted.

Meanwhile, the plaintiffs obtained judgment against G.S. Corporation for certain sums of money. On November 4, 1986, a charging order nisi against the property (which is the subject-matter of the mortgage) was obtained. On November 15, 1986 the charging order was registered at the Registry of Deeds.

Before the first extension ended, the defendants applied for a further extension of time of 30 days to register their mortgage. On January 5, 1987, the extension was granted (the second extension). The order was expressed to be made without prejudice to the rights acquired by United Overseas Bank Ltd. or any person prior to the time of actual registration of the said mortgage. On the same day, the charging order nisi was made absolute.

On January 16, 1987, the defendants registered their mortgage at the Registry of Companies.

In the present case, the plaintiffs sought (a) a declaration that the mortgage was void against the plaintiff's charge by virtue of section 131(1) of the Companies Act; and (b) a declaration that the plaintiffs were entitled to the proceeds of the sale of the property, it having been sold by the defendants as mortgagees.

Held: (1) the defendant's mortgage was registered under the Registration of Deeds Act some eight months or more before the plaintiffs' charging order nisi was registered. The mortgage being a valid charge *ab initio* as a consequence to its registration under Companies Act the defendants' legal mortgage had priority over the plaintiffs' equitable charge which was postponed to the mortgage by virtue of section 15 of the Registration of Deeds Act;

(2) the proviso to the order dated January 5, 1987 did nothing more than preserve the plaintiffs' right to assert, in the light of the defendants' subsequent lawful compliance with section 131(1) of the Companies Act, that the plaintiffs' security nevertheless ranked in law in priority to that of the defendants. The plaintiffs have exercised that right unsuccessfully;

(3) the application was dismissed.

Cases referred to:

(1) *In re Monolithic Building Company* [1915] 1 Ch. 643.

(2) *Ram Narain & Ors.* v. *Radha Kishen Moti Lal Chamaria* L.R. 57 I.A. 76; A.I.R. 1930 P.C. 66.

ORIGINATING SUMMONS.

D. Barker for the plaintiffs.

P. Gurbani for the defendants.

Grimberg J.C.: On May 30, 1985 G.S. Corporation (Singapore) Pte. Ltd. ("the company") created a mortgage ("the mortgage") over its immovable property known as No. 399 River Valley Road ("the property") in favour of the defendants. The mortgage was registered at the Registry of Deeds on March 3, 1986. By virtue of section 131(1) of the Companies Act, the mortgage was liable to be lodged with the Registrar of Companies for registration within 30 days after its creation. That section is in the following terms:

> "Subject to this Division, where a charge to which this section applies is created by a company there shall be lodged with the Registrar for registration, within 30 days after the creation of the charge, a statement of the prescribed particulars and –
>
> (a) the instrument, if any, by which the charge is created or evidenced; or
>
> (b) a copy thereof together with an affidavit verifying the execution of the charge and also verifying the copy as being a true copy of the instrument,
>
> and if this section is not complied with in relation to the charge the charge shall, so far as any security on the company's property or undertaking is thereby conferred, be void against the liquidator and any creditor of the company."

In the event, the mortgage was not registered within the period stipulated by section 131(1). On October 3, 1986, that is to say well after the